

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HEBER URIEL NEVAREZ,
Defendant.

MEMORANDUM DECISION AND
ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER
REVOCATION OF PRETRIAL
RELEASE

Case No. 2:07-CR-160 TS

This matter came before the Court on May 23, 2007, for hearing on Defendant's Motion to Reconsider Revocation of Pretrial Release.¹ As stated on the record at the close of the hearing, and for the reasons set forth below, the Court will deny Defendant's Motion and Defendant will continue to be detained pending trial.

The Court finds that there have been new developments since the April 24, 2007 hearing where the Court revoked the pretrial release of Defendant which was granted by U.S. Magistrate Judge Brazil in the Northern District of California. Most importantly, the government has filed a

¹ Docket No. 21.

Notice of Immigration Detainer.² At the previous hearing, the government indicated its yet-undocumented belief that Defendant may not be legally present in the United States. Then, on May 18, 2007, the Bureau of Immigration and Customs Enforcement (“BICE”) lodged an Immigration Detainer³ against Defendant. The Court notes that, as a general rule, the presumption lies in favor of release of a defendant, unless certain other factors are present that make release of the defendant unsafe or impractical. Subsection (g) to § 3142 sets forth factors the Court is to consider “in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.” Those factors include the nature and circumstances of the charged offense, the weight of the evidence, the history and characteristics of the person, and the nature and seriousness of the danger posed by the person to the community upon release.

Based upon the evidence before the Court, the Court again finds that Defendant poses a significant risk of flight, and no condition or combination of conditions can reasonably assure Defendant’s appearance in this matter. Significantly, it appears that Defendant is present in the United States illegally, and BICE has now lodged a detainer against him. Moreover, as noted in the Court’s initial detention order, Defendant previously absconded from the State of Utah, and there is an active state warrant out for his arrest. The Court also considered the very serious nature and circumstances of the charged offense, and the apparently significant weight of the evidence in

² Docket No. 34.

³ *Id.*, Exhibit A.

support thereof. Combined with the previous findings of the Court, the Court here finds that these factors rebut the presumption of release in this case.

CONCLUSION

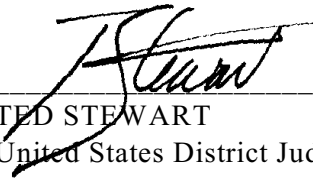
Therefore, based upon the above, it is hereby

ORDERED that Defendant's Motion to Reconsider Revocation of Pretrial Release (Docket No. 21) is DENIED, and Defendant will continue to be detained pending trial in this matter.

SO ORDERED.

DATED this 24th day of May, 2007.

BY THE COURT:



TED STEWART
United States District Judge